

IN THE JUSTICE OF THE PEACE COURT OF  
THE STATE OF DELAWARE, IN AND FOR NEW CASTLE COUNTY  
COURT NO. 13

Brandywine III Tenants Corporation  
Plaintiff below,  
Appellee.

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Vs.

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C.A. JP13-18-006603

Sandra Harrigan-Thompson  
Defendant below,  
Appellant.

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Trial de novo.

Submitted September 4, 2018.  
Published September 24, 2018.

Appearances:

Plaintiff/Appellee represented by Michael Morton, Esq.  
Defendant/Appellant *pro se*.

The Panel:

Sean P. McCormick, Deputy Chief Magistrate.  
Amanda Moyer, Justice of the Peace.  
Gerald Ross, Justice of the Peace.

#### Procedural History of the Case at Bar.

This matter was originally filed on June 5<sup>th</sup> instant in which the Plaintiff sought a rental debt as well as possession of the tenancy. The Court below conducted a hearing on July 16<sup>th</sup> and issued an opinion on July 24<sup>th</sup> in favor of the Plaintiff. The Court below noted in that opinion that "the tenant vacated; possession is no longer at issue, the matter went forward as a debt action." The Defendant filed an appeal *in forma pauperis* on July 31<sup>st</sup>. Both the application to proceed *in forma pauperis* and the request for an appeal based upon timeliness were approved on or about August 7<sup>th</sup>. On September 4<sup>th</sup> a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Judge Amanda Moyer, and Judge Gerald Ross convened to consider the appeal. This is the Court's decision after trial. For the reasons stated below, the Court found in favor of the Plaintiff for a monetary judgment.

#### Pre-Trial Considerations.

Prior to trial, Plaintiff's Counsel asked the Court to consider if it were the appropriate venue to hear the appeal. Since the Court below stated that the matter had gone forward as a debt action, and since the appropriate venue for an appeal of a debt action would be the Court of Common Pleas pursuant to 10 Del. Code § 9571. The Panel disagreed, noting that possession had been at issue at the time of filing; as such, the Panel held that the appeal was appropriately before the Court and would be considered. Thereafter, the Defendant/Appellant advised the Court that she intended to seek an unspecified counterclaim<sup>1</sup>, holding that the Plaintiff had failed to provide essential services and was acting in a retaliatory fashion. She attempted to provide the Court with a volume of correspondence that she believed would bolster her contentions. Plaintiff's Counsel objected both to the documentation (this, an anticipatory hearsay objection) as well as to the counter-claim itself. To this end, he moved to disallow consideration of the counter-claim in that it had not been raised in the Court below, and that no Bill of Particulars was filed pursuant to 25 Del. Code § 5715. Defendant/Appellant had only ignorance of the law to blame for her failing; in that she failed to perfect her counter-claim pursuant to statute, the motion to disallow it was granted.

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<sup>1</sup> When asked, Ms. Harrigan-Thompson was unable to specify a figure – either of a debt claimed by her, or for abatement. She advised simply that "They owe me!" The Panel took her assertion as simply a potential offset.

### Facts.

The Plaintiff put the property manager, Mr. Donald Clark, on the stand. Through his testimony and production of allied documents he established that the parties had engaged in a rental agreement whereby rent in the amount of \$1,200<sup>2</sup> was charged monthly, along with a \$64 late fee. The lease in question ran from April, 2017 through March 31, 2018. As of the end of April, 2018 a rental debt of exactly \$4,000 had accrued. Mr. Clark testified that effective April 1, 2018 the rent would increase to \$1,300 and Ms. Harrigan-Thompson would be charged an additional \$100 "month to month" fee, since no new lease was in place. Mr. Clark advised the Court that Although Ms. Harrigan-Thompson had told him that she was out as of the date of the hearing at the Court below, he did not receive the keys from her until July 21, 2018. Accordingly, he sought rent and late fees through that date. Ms. Harrigan-Thompson did not cross-examine Mr. Clark nor did she testify in her defense.

### Discussion.

Payment of rent is a material term of a contract; indeed, it is Ms. Harrigan-Thompson's breach of her contractual obligations that brings us here today. The question before the panel is not if rent is due, but rather how much is due. 25 Del. Code § 5108(a) holds that when a rental agreement ends and the parties have neither terminated the relationship or renewed it by subscribing to a new lease, the landlord-tenant relationship shall continue on a month-to-month basis with all other terms of the expired rental agreement continuing in full force and effect. Since the parties never renewed the lease, the assertion that rent went up from \$1,200 to \$1,300 effective April 1<sup>st</sup> flies in the face of the law – as does charging an additional fee to parties who are at the conclusion of their lease-term and who have yet to renew or quit. Neither term was included in the original lease, it is only those terms that govern the relationship between the parties. Certainly rent would continue to accrue after April 1<sup>st</sup> – but at a rate of \$1,200 per month, not \$1,300. Likewise, the "month to month" fees (\$100 of which was included in the \$4,000 total) must be rejected by the Panel.

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<sup>2</sup> Although the lease listed the rental amount as \$1,200 the parties advised that for the time the lease was in effect – that is, through March 31, 2018 – Ms. Harrigan-Thompson was given a \$120/month rent concession – meaning, for the duration of the lease her rent was effectively \$1,080/month. Effective April 1, 2018 the concession stopped.

Conclusion.

For the foregoing reasons, Judgment is hereby entered in the amount of \$6,170.00 (consisting of rent due and owing at the rate of \$1,200/month through July 21, 2018 and late fees at the rate of \$65/month for June and July of 2018) plus the cost of filing and interest at the legal rate on the debt.

**IT IS SO ORDERED THIS 24<sup>TH</sup> OF SEPTEMBER A.D. 2018.**



Sean P. McCormick  
Deputy Chief Magistrate  
For the Three Judge Panel.

